

**Response under 37 C.F.R. 1.116
- Expedited Examining Procedure -
Examining Group 2878**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Cheryl J. Brickey, et al

Group Art Unit: 2878

Examiner: Pascal M. Bui-Pho

EMISSIVE INDICATOR DEVICE

Serial No. 10/747,605

Filed 29 December 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

Pre-Appeal Brief Request for Review

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested based on the following Arguments.

Arguments

Claims 1, 6, 7, 10, 15, 18, 28 and 29 stand rejected under 35 USC 102 as being anticipated by Gordon et al. (US 5,432,339). With respect to independent claim 1, the Examiner states that Gordon et al discloses in Fig. 1 a timing device comprising: an indicator device (36,40) in a disc (arcuate shape) and detectors (38, 42, 44, 50, 52) sensitive to a wavelength of light emitted by the device, wherein said indicator device comprises the combination of a pulsating light-emissive element (36) and a patterning layer (40) patterned with a timing device encoder pattern wherein said indicator device moves relative to said detector. This rejection represents clear error at it clearly mischaracterizes the individual elements of the disclosed apparatus of Gordon et al. relative to the requirements of the present claimed invention.

The claims of the instant invention are specifically directed towards a timing device comprising a detector and an indicator device. The indicator device of the timing device of the instant invention comprises the combination of a light emitting element and a patterning layer patterned with a timing device encoder pattern. There is no support for the Examiner's characterization of X-ray source 36 and X-ray detector array 38 as being part of a timing device. To the contrary, such elements are clearly only disclosed as being part of a described X-ray tomography imaging system, and do not constitute part of any timing device which may be employed therewith. Significantly, each of elements 36 and 38 are provided in fixed relative locations on disk 38, and thus do not move relative to each other, and accordingly cannot function as a timing device. Markers 40 of Gordon et al are also disposed on disk 28, and they also are not employed in combination with X-ray source 36 so as for such combination to function as a timing device as alleged by the Examiner. Rather, markers 40 are employed in combination with sensors 42, 44, 50, 52 to detect position of disk 28. It is thus the combination of element 40 with elements 42, 44, 50, and 52 that may function as a timing device. Such combination, however, does not comprise an indicator device in accordance with the present claimed invention, as there is clearly no teaching in Gordon et al. to employ a light emitting element as part of an indicating device of a timing device. Again, X-ray source 36 is not in any way disclosed as being capable of functioning as part of an indicator device component of a timing device as alleged by the Examiner. The rejection of claim 1 as being anticipated by Gordon et al is accordingly based on a clear mischaracterization of the disclosure of Gordon et al., and is accordingly clearly in error.

Claims 1, 6, 7, 9, 13-19, 21, 22, 24, 28 and 29 stand rejected under 35 USC 102 as being anticipated by Oshima et al (US 5,932,139). With respect to claim 1, the Examiner states that Oshima et al discloses in Figs. 44-46 a timing device comprising an indicator device (80) and a detector (104) wherein said indicator device comprises the combination of a light-emissive element (84, 90, 91) and a patterning layer (88) wherein said indicator device moves relative to said detector device using transport (92) and rollers (99). This rejection represents clear error at it clearly mischaracterizes the individual elements of the

disclosed apparatus of Oshima et al. relative to the requirements of the present claimed invention.

As explained above, the claims of the instant invention are specifically directed towards a timing device comprising a detector and an indicator device, where the indicator device of the timing device of the instant invention comprises the combination of a light emitting element and a patterning layer patterned with a timing device encoder pattern. Such a timing device is clearly not taught or suggested in Oshima et al. as alleged by the Examiner. While disclosing a pattern 88 as noted by the Examiner, Oshima teaches forming standard bar code marks rather than be directed towards a timing device comprising a patterning layer patterned with a timing device encoder pattern. Such standard barcode markings employed in Oshima et al are not equivalent to a timing device encoder pattern, as they are not specifically patterned so as to provide for the functionality of a timing device (e.g., for the measurement of rotational speed, acceleration and more accurate positioning of servo-mechanical elements) as alleged by the Examiner. Any relative movement provided between the bar code mark 88 and the detector 104 in Oshima et al. is simply for the purpose of reading the information contained in the barcode itself, not for providing a timing device. As Oshima et al. is directed towards a fluorescent bar code information reading system and fails to disclose a timing device comprising a timing device encoder pattern, the anticipation rejection based on Oshima et al. represents clear error.

In the “Response to Arguments” section of the final rejection, the Examiner states that “timing device encoder pattern” has been “translated” to equate to “a timing device encoder like pattern”. Such baseless recharacterization of the claimed invention represents clear error on the part of the Examiner. There is simply no basis for such proposed “translation”, nor for the Examiner’s assertion that one of ordinary skill in the art may “deem” the black and white pattern used in a bar code as a timing device encoder pattern. While each of a bar code and a timing device encoder pattern may include black and white patterns, a bar code such as disclosed in Oshima et al is not the same as a timing device encoder pattern. Further, the present claim is not directed towards a generic black and white pattern which may read on either of such types of patterns. The Examiner’s refusal to provide any weight to the specifically claimed requirement

for the presence of a timing device encoder pattern in the claimed timing device represents further clear error in the rejection based on Oshima et al.

Claims 2-5, 8, 20, 22, 23 and 25-27 stand rejected under 35 USC 103 as being unpatentable over Gordon et al. et al. As Gordon et al. is not directed towards a timing device comprising an indicator device as claimed and as explained above, even if the proposed modifications of Gordon et al were to be performed as proposed by the Examiner, the present invention clearly still would not be obtained, and such rejection represents clear error for at least the same reasons as the anticipation rejection.

Further, with respect to claims 2, 3, and 8, there is in any event no teaching or suggestion to modify the X-ray tomography system of Gordon by replacing the X-ray source element 36 with an electroluminescent material, an organic light-emitting diode, or pixels as proposed by the Examiner to provide the specific features taught as being useful in a timing device in accordance with the present invention, especially to the extent such additional claim features are not in any way suggested as being pertinent to such the disclosed X-ray tomography system, and rather would appear to prevent the functionality thereof. The Examiner apparently is proposing that it would be obvious to substitute the X-ray source 36 of the disclosed X-ray tomography system with an electroluminescent light source. As such substituted light source would clearly not provide the required functionality of the X-ray source in the actual system of Gordon et al., such a substitution would clearly NOT be contemplated by one of skill in the art. Accordingly, a prima facie case of obviousness has clearly not been established, and such rejection represents clear error.

Claim 17 is rejected under 35 USC 112, second paragraph, the Examiner stating it is unclear how a light-emissive element attached to a patterned layer, constituting the indicator element, can emit light on the exterior of the indicator element. This rejection is also in clear error, as such claimed embodiment is clearly described in the paragraph beginning at page 12, line 21 of the specification, where it is explained that when the indicator element is in the form of a tubular shape with the light-emissive element emitting light on the exterior of the tube (as claimed in claim 17), this facilitates a detector being on the

inside of the tube being illuminated from the light emitting element on the outside of the tube through the pattern layer on the inside of the light emissive element. Thus, it is clear that the claim is directed towards the relative locations of the light emissive element and patterning layer of the indicator device being located on the exterior or interior sides of the claimed tubular shape for such claimed embodiment. While the claim is believed to be clearly in compliance with 35 USC 112, second paragraph in view of such description provided in the specification, Applicants would be willing to consider any alternative language the Examiner may propose which is believed to provide even further clarity should this issue be the only remaining item to put the application in condition for allowance.

The final rejection being clearly in error for at least the reasons asserted above, a prompt and favorable action in response to this request is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew J. Anderson", written over a horizontal line.

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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.